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SUBJECT: CROATIA SEES BRIGHTER PROSPECTS FOR RESOLVING  
BORDER DISPUTE WITH SLOVENIA

¶1. (U) SUMMARY: Zagreb is cautiously optimistic that Croatia can reach an agreement with Slovenia by the end of the year to take their unresolved border issues to arbitration, most likely at the International Court of Justice (ICJ) in The Hague. The Croatia-Slovenia border commission has largely finished drawing up the legal documents that would be the basis for the arbitration. All that remains is for both capitals to green light the case for arbitration. Zagreb would like to resolve the bilateral dispute sooner rather than later and sees the early indications out of Ljubljana's likely new government as encouraging. However, Slovenia's insistence on the legal concept of "ex aequo et bono" (according to the right and good) could still keep the matter from being taken to arbitration in the near-term. END SUMMARY

What Is At Stake  
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¶2. (U) The main issue concerns the maritime boundary, which was never established between the two former Yugoslav republics, and Slovenia's claims to waters in Piran Bay. There are also several contested points along the land border, including along the Dragonja River in the Istria region, and in a few other mountainous areas between Sveti Martin and Hotiza, near the summit of Mt. Sneznik, and on a mountain ridge running from Sekulici, Croatia towards the village of Bregana. None of the disputed points are of major economic or strategic significance.

Bled Agreement Sets the Stage for the End Game  
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¶3. (U) In August 2007 at Lake Bled in Slovenia, Croatian Premier Ivo Sanader and former Slovenian Premier Janez Jansa agreed to take both land and border issues to arbitration at the International Court of Justice (ICJ) in The Hague for resolution. The ICJ was considered a neutral compromise after Croatia rejected Slovenia's request to arbitrate the issue in front of the Badinter Commission and Slovenia rejected Croatia's request to arbitrate in front of the International Tribunal for the Law of the Sea in Hamburg. Jansa, however, failed to gain full support across the political spectrum in Slovenia for the ICJ as the venue for the arbitration. The Bled Agreement also stipulated that other bilateral sore-points -- i.e., nuclear waste disposal at Krsko and deposits in the Ljubljanska Banka -- would be handled separately via bilateral agreements or other court proceedings.

Border Commission Wraps-Up  
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¶4. (U) The two governments set up a bilateral border commission to clarify the legal terms and the scope of the arbitration, which has met three times in the past year, most recently in early October, and has finished its work.

Throughout these meetings, Croatia has been insistent that the matter be taken to the ICJ. The Slovenian position has been that the venue for arbitration could be either the ICJ, the Permanent Court of Arbitration in the Hague, or some other ad hoc international body of mediation.

#### Capitals Mull Final Options

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15. (SBU) These relatively minor border disputes have assumed greater significance in the context of Croatia's EU accession negotiations. The Croatian media reported extensively on parting comments from out-going Slovene FM Dimitri Rupel, indicating that Slovenia would block EU negotiations on any chapter that included Croatian maps or references to the border. There is presently cautious optimism in Croatia regarding the border dispute and a belief that Pahor and his foreign policy team will have a less antagonistic stance toward Croatia. Croatian officials at both the Foreign Ministry and the President's Office have noted to EmbOffs their relief that, for the first time in nearly a decade, bilateral disputes between Croatia and Slovenia were not a campaign issue in the latest parliamentary campaigns in either Croatia or Slovenia. The Croatian MFA is optimistic that the new government in Ljubljana, mostly likely headed by Borut Pahor, will support a final decision to take the dispute to the ICJ. Sanader has emphasized that Zagreb is ready to see the matter arbitrated, and Pahor, for his part, has indicated that he would continue with the previous government's policies vis-a-vis Croatia, and suggested that a final decision could be made by Christmas.

16. (U) Pahor has, however, insisted that the concept of "ex aequo et bono" be one of the criteria weighed by the arbitrary body in its judgment. (NOTE: Ex aequo et bono (according to the right and good) is a legal term of art and refers to the power of the arbitrator to dispense with consideration of the law and consider solely what the arbitrators consider to be fair and equitable. END NOTE.) ICJ governing statutes allow for the court to decide cases ex aequo et bono, but only where the parties agree to this principle in advance. Up to the end of 2007, the ICJ has never decided such a case solely on this principle, but some legal scholars have argued that the concept is well suited toward disputes between parties in "a complex and long-term relationship." Croatia has rejected this legal concept as a factor for consideration in the arbitration.

17. (SB) COMMENT: While Sanader and Jansa had a constructive relationship, much of Croatia's renewed optimism on this issue appears to come from seeing the back of FM Rupel. Given Pahor's comments on "ex aequo et bono", however, Croatia's effort to get this issue to the ICJ still has some ways to go. END COMMENT.  
Bradtke